



Free Legal Assistance Group, et al. v. Democratic Republic of Congo

Communications 25/89, 47/90, 56/91, 100/93 (joined)

Country: Congo, DRC

Region: Africa

Year: 1995

Court: African Commission on Human and Peoples' Rights African Commission on Human and Peoples' Rights

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Freedom of religion, Right to due process/fair trial, Right to education, Right to health, Right to liberty and security of person, Right to life

Facts

Members of the World Organization Against Torture filed Communication 25/89 with the African Commission for Human and Peoples' Rights (the Commission) in March 1989 alleging torture of 15 detained persons by a military unit in the Democratic Republic of Congo (the DRC). The Lawyers' Committee for Human Rights in New York filed Communication 47/90 with the Commission in October 1990 alleging arbitrary arrests, arbitrary detentions, torture, extra-judicial executions, unfair trials, severe restrictions placed on the right to association and peaceful assembly, and suppression of the freedom of the Press, by the DRC. In March 1991, the Jehovah's Witnesses of Zaire filed Communication 56/91 alleging persecution of Jehovah's Witnesses in the DRC, including arbitrary arrests, appropriation of church property, and exclusion from access to education.

In spite of numerous attempts by the Commission to communicate these complaints to the government of the DRC over the course of 4 years, no response was received. In order to make a finding on the allegations of human rights violations, the Commission had to decide if the requirement of Article 56 of the African Charter on Human and Peoples' Rights that complainants exhaust local remedies had been satisfied.

Decision and Reasoning

The Commission found the case admissible as utilization of domestic remedies for each complaint seemed impractical or undesirable.

The Commission found that the stated facts constitute serious and massive violations of the African Charter by DRC. DRC never responded to the Commission regarding any of the Communications. The Commission has a principle that lack of contestation by states for human rights violations required the Commission to decide on the case assuming the evidence provided as fact. The Communications pointed to significant violations committed by the DRC.

Decision Excerpts

36. Article 56 of the African Charter requires that Complainants exhaust local remedies before the Commission can take up a case, unless these remedies are as a practical matter unavailable or unduly prolonged. The requirement of exhaustion of local remedies is founded on the principle that a government should have notice of a human rights violation in order to have the opportunity to remedy such violations before being called before an international body.

40. In the present case, there has been no substantive response from the Government of Zaire, despite the numerous notifications of the communications sent by the African Commission. The African Commission, in several previous decisions, has set out the principle that where allegations of human rights abuse go uncontested by the government concerned, even after repeated notifications, the Commission must decide on the facts provided by the Complainant and treat those facts as given. 2 This principle conforms with the practice of other international human rights adjudicatory bodies and the Commission's duty to protect human rights. Since the Government of Zaire does not wish to participate in a dialogue, the Commission must, regrettably, continue its consideration of the case on the basis of facts and opinions submitted by the

Complainants alone.â€•

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